

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:ITA:B04  
PLR-132258-09  
Date:  
December 09, 2009

In re:

Act	=
Plaintiff	=
Defendant	=
Trial Court	=
Appellate Court	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
A	=
Z	=

Dear :

This is in response to your request for a private letter ruling that a lump sum payment of \$Z that you received to settle a claim for A under the Act is excludable from your gross income under § 104(a)(2) of the Internal Revenue Code.

### FACTS

In Year 1, you sued in Trial Court under the Act alleging that you suffered A at the hands of employees and agents of Defendant. In Year 2, a jury rendered a special verdict finding Defendant liable and awarded damages. Defendant appealed. The Appellate Court, in Year 3, reversed the judgment of the Trial Court and remanded for a new trial. In Year 4, you received \$Z under a Settlement Agreement to settle your claim. You represent that no portion of the \$Z was for punitive damages or interest.

## **LAW AND ANALYSIS**

Section 104(a)(2) provides, that except in case of amounts attributable to (and not in excess of) deductions allowed under § 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include the amount of any damages (other than punitive damages) received (whether by suit or agreement) on account of personal physical injuries or physical sickness.

Section 1.104-1(c) of the Income Tax Regulations provides that the term “damages received (whether by suit or agreement)” means an amount received through prosecution of a legal action based upon tort or tort type rights or through a settlement agreement entered into in lieu of such prosecution.

Section 1605 of the Small Business Job Protection Act of 1996 limits the exclusion from gross income provided by §104(a)(2) to amounts received on account of personal physical injuries or physical sickness (subject to one exception). In H.R. Conf. Rep. No. 104-737 at 301 (1996), Congress expressed its intent about damages received for emotional distress attributable to a physical injury:

Because all damages received on account of a physical injury or physical sickness are excludable from gross income, the exclusion from gross income applies to any damages received based on a claim of emotional distress that is attributable to physical injury or physical sickness.

The action you brought in Trial Court sought recovery for A (which is a physical injury under § 104(a)(2)) and emotional distress due to A. Your claim was also based in tort under § 1.104-1(c). Subsequently, the claim was settled in the Settlement Agreement.

## **CONCLUSION**

Based strictly on the information submitted and the representations made (including your representation that no portion of the settlement payment was for punitive damages or interest), we conclude that the \$Z you received under the Settlement Agreement is excludable from your gross income under § 104(a)(2) (except for any amount for medical expenses you paid or incurred related to A, but only if you in fact deducted those expenses on a pre-Year 4 federal income tax return).

We do not express or imply an opinion on the federal tax consequences of any aspect of these transactions other than those expressed in the conclusion, above.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations that you submitted under penalties of perjury. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

You must attach to any income tax return to which it is relevant a copy of this letter or, if you file your returns electronically, a statement providing the date and control number of this letter ruling.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael J. Montemurro  
Chief, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: